

DEPOSITION OF KIRK LAMBERTH

November 15, 2006

Pages 1 through 135

**CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:**

Haislip, Ragan, Green, Starkie & Watson, P.C.

566 South Perry Street

Post Office Box 62

Montgomery, AL 36104

Phone: (334) 263-4455

Fax: (334) 263-9167

E-mail: haislipragan@charter.net

<p style="text-align: right;">Page 1</p> <p>1 2 3 IN THE UNITED STATES DISTRICT COURT 4 FOR THE MIDDLE DISTRICT OF ALABAMA 5 6 NORTHERN DIVISION 7 8 JANICE McCOLLUM, 9 Plaintiff, 10 11 Vs. CIVIL ACTION NO. 12 05-cv-0326-W 13 14 Amtren, Inc., 15 Defendant. 16 17 ***** 18 DEPOSITION OF KIRK LAMBERTH, taken 19 pursuant to stipulation and agreement before 20 Patricia G. Starkie, Registered Diplomat Reporter, 21 CRR, and Commissioner for the State of Alabama at 22 Large, in the Law Offices of Slaten & O'Connor, 105 23 Tallapoosa Street, Montgomery, Alabama, on Wednesday, November 15, 2006, commencing at approximately 10:05 a.m. *****</p>	<p style="text-align: right;">Page 3</p> <p>1 2 EXHIBIT INDEX 3 PLAINTIFF'S EXHIBITS 4 1 Amtren's responses to Plaintiff's 28 discovery requests 5 6 2 Five-page letter to the EEOC from Mr. 57 Lamberth 7 3 Attachment to PX-2 relating to item five 58 (bank overdrafts) 8 9 4 Attachment to PX-2 relating to item two 80 (health insurance premium payments) 10 5 Attachment to PX-2 relating to item one 91 (Late Payroll Tax Deposits) 11 12 6 Attachment to PX-2 relating to item 93 three (Credit Card Processor Cancellation due to lack of payment) 13 14 7 Attachment to PX-2 relating to item four 93 (Lease of Copier) 15 8 Form 941 - penalty and interest (Also 108 marked DX-5 to McCollum deposition) 16 17 ***** 18 STIPULATION 19 It is hereby stipulated and agreed by and 20 between counsel representing the parties that the 21 deposition of: 22 KIRK LAMBERTH 23 is taken pursuant to the Federal Rules of Civil</p>
<p style="text-align: right;">Page 2</p> <p>1 2 APPEARANCES 3 FOR THE PLAINTIFF: 4 Mr. Jimmy D. Jacobs Attorney at Law 5 143 Eastern Boulevard Montgomery, Alabama 6 7 FOR THE DEFENDANT: 8 Mr. G. R. "Rick" Trawick SLATEN & O'CONNOR 9 Attorneys at Law 10 105 Tallapoosa Street Montgomery, Alabama 11 12 ALSO PRESENT: 13 Ms. McCollum 14 15 ***** 16 EXAMINATION INDEX 17 KIRK LAMBERTH 18 BY MR. JACOBS 5 19 BY MR. TRAWICK 118 20 21 22 23</p>	<p style="text-align: right;">Page 4</p> <p>1 Procedure and that said deposition may be taken 2 before Patricia G. Starkie, Registered Diplomat 3 Reporter, CRR, and Commissioner for the State of 4 Alabama at Large, without the formality of a 5 commission; 6 That objections to questions other than 7 objections as to the form of the question need not 8 be made at this time but may be reserved for a 9 ruling at such time as the said deposition may be 10 offered in evidence or used for any other purpose 11 by either party provided for by the Statute. 12 It is further stipulated and agreed by and 13 between counsel representing the parties in this 14 case that the filing of said deposition is hereby 15 waived and may be introduced at the trial of this 16 case or used in any other manner by either party 17 hereto provided for by the Statute regardless of 18 the waiving of the filing of the same. 19 It is further stipulated and agreed by and 20 between the parties hereto and the witness that the 21 signature of the witness to this deposition is 22 hereby waived. 23 *****</p>

Page 21	Page 23
<p>1 manufacture?</p> <p>2 A. Let me count, because I want to try -- I'm</p> <p>3 not going -- again, I'm going to use a</p> <p>4 number that I just -- I think it's going to</p> <p>5 be six or seven.</p> <p>6 Q. Okay. Now, do the engineers do any of the</p> <p>7 manufacturing work?</p> <p>8 A. Their responsibility does not do that, but</p> <p>9 they do assist from time to time.</p> <p>10 Q. Okay. And to sort of get a picture in my</p> <p>11 head, once a unit is produced, I would</p> <p>12 assume it's boxed somehow, and your</p> <p>13 manufacturing people would do that and move</p> <p>14 it to some location to be sold?</p> <p>15 A. We have an assembly line process. At the</p> <p>16 end of the line it's quality checked, and</p> <p>17 then it goes into a carton and is closed</p> <p>18 up, yes.</p> <p>19 Q. How many people are currently involved in</p> <p>20 management with Amtren?</p> <p>21 A. Currently? Five. Let me count...</p> <p>22 MR. TRAWICK: To keep from</p> <p>23 confusing the court reporter,</p>	<p>1 Q. What's her title?</p> <p>2 A. Accounting manager.</p> <p>3 Let me clarify that. It's accounting</p> <p>4 and business management.</p> <p>5 Q. And Derrick Garrett?</p> <p>6 A. Service manager.</p> <p>7 Q. And Michael Rogers?</p> <p>8 A. He's the logistics and inventory manager.</p> <p>9 Q. Is he that person that we were talking</p> <p>10 about that would purchase and --</p> <p>11 A. Exactly.</p> <p>12 Q. -- do inventory control and so on?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And typically service manager to me</p> <p>15 means something in a retail setting, but</p> <p>16 what does your service manager do?</p> <p>17 A. Our service manager receives calls from the</p> <p>18 customer. He manages a small group,</p> <p>19 there's only two in it, but they're the</p> <p>20 calls that come in from the customer with</p> <p>21 issues regarding the systems.</p> <p>22 Q. Okay.</p> <p>23 A. Questions that -- you know, it's service</p>
Page 22	Page 24
<p>1 if you verbalize your</p> <p>2 thoughts, she takes it down.</p> <p>3 THE WITNESS: Sorry about that.</p> <p>4 My apologies.</p> <p>5 A. I'm going to say five.</p> <p>6 Q. Okay. And I'm assuming that you are one of</p> <p>7 those?</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. You are the president and CEO?</p> <p>10 A. That's correct.</p> <p>11 Q. Who are the other four?</p> <p>12 A. By name, Bobby Lake, Susan Seeber, Derrick</p> <p>13 Garrett --</p> <p>14 Q. Derrick?</p> <p>15 A. D-E-R-R-I-C-K, Garrett, G-A-R-R-E-T-T, and</p> <p>16 Michael Rogers.</p> <p>17 Q. What is Bobby Lake's title?</p> <p>18 A. His title is general manager. There's a</p> <p>19 secondary title with that, too, controller.</p> <p>20 Q. Is Susan Seeber --</p> <p>21 A. Seeber.</p> <p>22 Q. Seeber?</p> <p>23 A. Yes, uh-huh (positive response).</p>	<p>1 calls similar to if you would call a</p> <p>2 manufacturer for help with a product.</p> <p>3 Q. And the accounting manager?</p> <p>4 A. Susan?</p> <p>5 Q. Yes.</p> <p>6 A. What was your question?</p> <p>7 Q. What specifically does she do?</p> <p>8 A. Susan is responsible for the accounts</p> <p>9 payable, the accounts receivable, the</p> <p>10 basically matching the purchase orders with</p> <p>11 the packing lists. I would say primarily</p> <p>12 any accounting duty up and to the</p> <p>13 production of -- in fact, I guess all</p> <p>14 accounting areas. She also manages the</p> <p>15 front office, too, anybody in the front</p> <p>16 office.</p> <p>17 Q. Okay. Does she do like monthly income</p> <p>18 statements?</p> <p>19 A. Yes, she does.</p> <p>20 Q. Financial statements for the end of the</p> <p>21 year?</p> <p>22 A. Yes, she does. Those are nonaudited, just</p> <p>23 output type reports. And she does,</p>

Page 25	Page 27
<p>1 actually, some of them weekly.</p> <p>2 Q. Okay. Is she also responsible for writing</p> <p>3 checks?</p> <p>4 A. Yes, she is.</p> <p>5 Q. Making payments to Blue Cross Blue Shield?</p> <p>6 A. Yes, she is.</p> <p>7 Q. And tax payments?</p> <p>8 A. Yes, she is.</p> <p>9 Q. Is she a CPA?</p> <p>10 A. No, she is not.</p> <p>11 Q. To try to shorten things a little bit, I'm</p> <p>12 going to say I think the general manager is</p> <p>13 responsible for everything; is that right?</p> <p>14 A. The general manager in the role is -- yes,</p> <p>15 operations and -- I call it the front</p> <p>16 office, if you will. It would be the</p> <p>17 service and the purchasing and the</p> <p>18 accounting areas, yes.</p> <p>19 Q. Okay.</p> <p>20 A. I think that's correct.</p> <p>21 Q. And how is that role different from that of</p> <p>22 controller?</p> <p>23 A. The controller title in Mr. Lake's</p>	<p>1 before that?</p> <p>2 A. No, he was hired in as general manager.</p> <p>3 Q. Okay. What about Derrick Garrett? How</p> <p>4 long has he been with you?</p> <p>5 A. Again, I'm going to estimate 2003. Late</p> <p>6 2003, early 2004.</p> <p>7 Q. And Michael Rogers?</p> <p>8 A. Spring of 2006. Exact month, I would</p> <p>9 estimate May.</p> <p>10 Q. Who did Mr. Rogers replace?</p> <p>11 A. At the time of his employment?</p> <p>12 Q. Yes.</p> <p>13 A. Wayne Crabtree.</p> <p>14 Q. And who did Derrick Garrett replace?</p> <p>15 A. The position did not -- it's a growth</p> <p>16 position. It did not exist.</p> <p>17 Q. New position?</p> <p>18 A. Yes.</p> <p>19 Q. And whom did Susan Seeber replace?</p> <p>20 A. Lisa McNamee.</p> <p>21 Q. And Bobby Lake?</p> <p>22 A. New position.</p> <p>23 Q. Do you recall the date that Janice McCollum</p>
Page 26	Page 28
<p>1 situation is because he is the CPA, and he</p> <p>2 does review our accounting output; thus,</p> <p>3 the title is, if you will, a co-title to</p> <p>4 allow that role to be a double check for</p> <p>5 the accounting system.</p> <p>6 Q. Okay. When was Bobby Lake employed as</p> <p>7 general manager and/or controller?</p> <p>8 A. I believe the dates are somewhere -- we can</p> <p>9 verify this. It would be January or</p> <p>10 February of this year. We can verify the</p> <p>11 exact date if you want to. I do know it</p> <p>12 was the beginning of this year.</p> <p>13 Q. Okay. How about Susan Seeber?</p> <p>14 A. I believe her role -- it would be in the</p> <p>15 fall of last year. It would be somewhere</p> <p>16 around October -- again -- September,</p> <p>17 October, I believe.</p> <p>18 Q. Was Susan Seeber hired into the position of</p> <p>19 accounting manager or --</p> <p>20 A. Yes, she was.</p> <p>21 Q. Okay. And I want to ask the same question</p> <p>22 about Bobby Lake. Was he hired as general</p> <p>23 manager or did he have some other position</p>	<p>1 was initially employed?</p> <p>2 A. The dates of her employment?</p> <p>3 Q. Yes.</p> <p>4 A. January of 2004 through April of 2005.</p> <p>5 Q. Okay. Who was responsible for hiring her?</p> <p>6 A. I was.</p> <p>7 (Plaintiff's Exhibit 1 was marked</p> <p>8 for identification.)</p> <p>9 Q. If you would look at -- I'll represent to</p> <p>10 you this is Amtren's responses to</p> <p>11 Ms. McCollum's discovery requests. Have</p> <p>12 you ever signed a copy of this?</p> <p>13 MR. TRAWICK: Yes.</p> <p>14 A. Yes.</p> <p>15 MR. TRAWICK: We can get you a</p> <p>16 signed copy.</p> <p>17 MR. JACOBS: I'm not sure that I</p> <p>18 have one.</p> <p>19 MR. TRAWICK: My recollection is</p> <p>20 we sent this to you and told</p> <p>21 you we would supplement with a</p> <p>22 signed copy.</p> <p>23 MR. JACOBS: That you would get a</p>

Page 53

Page 55

1 A. I gave her that.
 2 Q. How did you do that?
 3 A. I asked for more information be provided
 4 during the weekly summaries that she was
 5 providing.
 6 Q. Okay. And when you say you asked, was that
 7 verbal or in writing?
 8 A. It was verbal.
 9 MR. JACOBS: I'd like to take a
 10 short break.
 11 (Brief recess.)
 12 Q. (Mr. Jacobs continuing) Mr. Lamberth, did
 13 Ms. McCollum have a written job
 14 description?
 15 A. No. I don't recall. I don't think we ever
 16 did. As a whole, we don't do job
 17 descriptions.
 18 Q. That was going to be my next question.
 19 Does anyone in the company have a job
 20 description, a written one?
 21 A. No.
 22 Q. In your response to our discovery
 23 request -- I'm going to ask you about a

1 response to you and telling you -- asking
 2 you to tell me what responsibilities she
 3 adequately failed to perform.
 4 A. The accounting system -- basically, there
 5 were several areas that -- you know, in the
 6 accounting system, this is -- you're not
 7 really pertaining to the software or
 8 anything, you're talking about the
 9 duties -- we're talking about the duties,
 10 you're basically saying now?
 11 Q. I don't know what I'm talking about. I'm
 12 asking you about your --
 13 MR. TRAWICK: I think he's just
 14 asking you to explain this
 15 answer.
 16 Q. Yes.
 17 A. Okay. I can clarify that the system in
 18 that statement was a process, so I can
 19 explain her deficiencies in that. When I
 20 mean system, I mean a system like our
 21 entire process.
 22 Several areas that she did. One is
 23 that she did overdraw at our -- on our bank

Page 54

Page 56

1 series of things and reasons that you gave
 2 for terminating Ms. McCollum.
 3 One of those things was you allege that
 4 she failed to adequately perform her
 5 responsibilities pertaining to Amtren's
 6 accounting system.
 7 MR. TRAWICK: You're reading from
 8 paragraph number eight on page
 9 four?
 10 MR. JACOBS: I believe so, yes.
 11 We're going to be drawing from
 12 that for the next period of
 13 time.
 14 THE WITNESS: What page?
 15 MR. TRAWICK: Four.
 16 Q. Page four, number eight.
 17 What responsibilities did she fail to
 18 adequately perform?
 19 A. For?
 20 Q. The accounting system.
 21 A. The accounting system? Like the day-to-day
 22 activity or the --
 23 Q. I honestly don't know. I'm reading your

1 account. We had never had that before. I
 2 was unaware of that. I was never made
 3 aware of that, and Amtren had adequate
 4 funds for the transactions.
 5 She issued the checks -- signed the
 6 checks, disbursed the checks, and then
 7 pulled money from our money market account
 8 to our checking account incorrectly. And
 9 then they would basically, apparently, not
 10 be covered, and we would pay for those
 11 penalties with overdraft charges.
 12 Q. Was this a particular transaction you're
 13 talking about, or was this more than one
 14 transaction?
 15 A. No, it was more than one transaction. If
 16 I'm not mistaken, it was several. It
 17 amounted to several thousand dollars in
 18 overdraft charges.
 19 Q. Could you identify those transactions for
 20 me?
 21 A. Could I identify them?
 22 Q. Yes.
 23 A. I believe that -- I don't know if we

Page 57

1 provided a list or not. I'm not sure.
2 Q. Let me represent to you that I haven't seen
3 a list.
4 A. Well, I guess we will have to -- I believe
5 that there is a list in this. Hang on.
6 There is a list in here.
7 MR. TRAWICK: I think the last
8 page.
9 A. It is in the --
10 MR. TRAWICK: We produced this to
11 you.
12 A. Right. It is the last page of this.
13 Q. And that would be the last page of your
14 response to the EEOC?
15 A. That's correct.
16 Q. All right.
17 A. Regarding the --
18 Q. If we could mark this as Plaintiff's
19 Exhibit 2.
20 (Plaintiff's Exhibit 2 was marked
21 for identification.)
22 MR. TRAWICK: Plaintiff's Exhibit
23 2 will be this five-page

Page 58

1 letter to the EEOC signed by
2 Kirk?
3 MR. JACOBS: Right.
4 (Plaintiff's Exhibit 3 was marked
5 for identification.)
6 MR. JACOBS: And then Plaintiff's
7 Exhibit 3 will be the
8 attachment relating to item
9 five.
10 Q. Is that the one you're referring to, bank
11 overdrafts, Mr. Lamberth?
12 A. Yes.
13 Q. If you would, explain that sheet to me.
14 A. This sheet is a summary that outlines just
15 the transactions on our checking account
16 for these periods of time regarding this
17 activity. We -- I had never really
18 experienced overdrafts before, so when we
19 discovered this, we just produced this
20 document as a summary document to represent
21 the number of NSF's which are identified in
22 there.
23 Q. First of all, when was this document

Page 59

1 generated, this summary?
2 A. I would say it would be on or around the
3 date of this letter.
4 Q. Okay.
5 A. June 29th of 2005.
6 Q. Let me just look at the very first item
7 there, 10/26/2004. It says,
8 reversal/credit, and then it has the number
9 30 over there. Could you explain to me
10 what that represents?
11 A. I'm not sure what that means. The only
12 part of this document that I'm probably
13 going to be -- that I focused on or --
14 would be the NSF charges.
15 Q. Okay. And there are a series of those from
16 10/29 of 2004 to 4/13/2005.
17 If you would, take the first one of
18 those, 10/25, and tell me what that
19 represents.
20 A. You mean the NSF?
21 Q. Yes. Yes, the NSF.
22 A. It's my understanding that that is a charge
23 for nonsufficient funds for a check

Page 60

1 presented at our bank without proper funds
2 in the account.
3 Q. What does the dash 30 mean?
4 A. I think that that is a charge to our -- for
5 the overdraft charge.
6 Q. Okay. You're not sure what that is?
7 A. I'm -- on that one, I think that is. It
8 states NSF fee. I'm pretty certain that
9 that's a charge from the bank to us for the
10 overdraft.
11 Q. Okay. Is it my understanding, then, that
12 these other items on here other than NSF
13 fees don't represent errors of any kind
14 that you're referring to as --
15 A. Not to my knowledge. I think that was a
16 summary document that was produced that had
17 other information on it. We were primarily
18 for this attachment focused on the NSF fee
19 portion.
20 Q. Okay. And who generated this report?
21 A. I did.
22 Q. You did?
23 A. Uh-huh (positive response).

Page 69

Page 71

1 first one, failed to adequately perform her
 2 responsibilities pertaining to the
 3 accounting system?
 4 A. Yes.
 5 Q. Okay. Which one or ones of Amtren's
 6 vendors did Ms. McCollum not pay?
 7 A. Ms. McCollum in -- toward the end of
 8 February, the beginning of March, several
 9 vendors contacted me directly and stated to
 10 me that their -- they said --
 11 The two primary vendors are Brundidge
 12 Electronics Corporation in Brundidge,
 13 Alabama, and Carter & Carter Manufacturing
 14 in Lacey's Spring, Alabama. They're our
 15 two largest vendors. We have done business
 16 with them for years.
 17 They contacted me with concern over
 18 payments to their account.
 19 Q. Okay.
 20 A. Basically, we were approaching a limit of
 21 terms with them that they - we were
 22 exceeding the credit limit is what we were
 23 approaching.

1 sufficient to make larger payments at that
 2 time?
 3 A. They should have been.
 4 Q. Well, were they?
 5 A. At that time, this would be -- I would say
 6 there should have been adequate cash to pay
 7 the accounts.
 8 Q. All right. Do you know whether there was
 9 adequate cash or not?
 10 A. To the best of my knowledge, there was
 11 adequate cash there.
 12 Q. If Ms. McCollum were to represent that
 13 there was not adequate cash to pay more,
 14 you would say that was not true?
 15 A. Not correct. That's really not -- Let me
 16 see. Let me go -- basically, the cash
 17 planning of the company was Ms. McCollum's
 18 responsibility. We had a line of credit
 19 and we had a checking account and we had
 20 materials. Totally responsible. Totally
 21 responsible for issuing the checks. So the
 22 problem occurs in that the cash position
 23 was also being reported there, too. The

Page 70

Page 72

1 Q. All right. How did they contact you?
 2 A. By phone.
 3 Q. Do you have records of when they contacted
 4 you with those phone calls?
 5 A. Unh-unh (negative response). I do not.
 6 Q. What specifically did they tell you when
 7 they called you?
 8 A. Just that they were concerned about the
 9 payments to their accounts.
 10 Q. Are you telling me they said they had not
 11 been paid?
 12 A. They -- really, more likely that the amount
 13 of money that -- we weren't paying against
 14 their account enough to decrease the amount
 15 we owed them. In other words, the
 16 outstanding amount was growing.
 17 Q. Okay. Was that outstanding amount
 18 reflected in the weekly recaps that you
 19 got?
 20 A. Not completely.
 21 Q. Was it partially?
 22 A. Partially.
 23 Q. Were the company's accounts, cash accounts

1 line of credit. So it's difficult for me
 2 to state one item without looking --
 3 discussing the other ones, see, because she
 4 reported the entire -- both situations to
 5 me.
 6 Q. All right.
 7 A. So we -- according to the plans, going back
 8 to the planned migration of the product,
 9 meaning the older revision to the newer
 10 revision, there was plenty of cash and a
 11 line of credit available to pay all vendors
 12 timely.
 13 Q. All right. What would we have to look at
 14 to verify that there was enough cash or
 15 that there was not enough cash available?
 16 MR. TRAWICK: Well, you're
 17 limiting your question to
 18 cash. I think his answer
 19 includes the line of credit
 20 also.
 21 Q. Well, then, I'll back up. What were all of
 22 the things that we would have to look at to
 23 determine whether there was sufficient

Page 73

1 resources available?

2 A. What you would look at is the cash position

3 and the line of credit position beginning,

4 say, in October -- September, October of

5 the previous year and try to watch that

6 through this period that you're talking

7 about.

8 Q. Okay. And what would we have to look at in

9 order to be able to do that? Bank

10 statements?

11 A. I believe the bank statements would tell

12 you the transactions and the position, but

13 then we would also have to look at the --

14 probably an inventory sheet that would show

15 the inventory amounts as well.

16 Q. Okay. Anything else we would need to look

17 at?

18 A. I can't -- you know, that's asking

19 something I'm not completely familiar with,

20 how to completely do that.

21 Q. Are there any documents related to the use

22 or availability of the line of credit?

23 A. Well, I would imagine that would probably

Page 74

1 come from the bank statements, too.

2 Q. Okay.

3 A. I believe that that would -- again, I'm not

4 completely well versed at how you would

5 check that, but I believe that would be the

6 way to do it.

7 Q. What did you look at to make your

8 determination that that was the cause, that

9 she didn't pay the vendors, and there was

10 plenty of cash available?

11 A. Well, the -- my result -- this statement

12 results from the fact that when I was

13 made --

14 The vendors contacted me. I did

15 research into this to look into it. At

16 that time, I guess the information showed

17 that we had really just overspent in

18 several areas, including the inventory. So

19 my issue with Ms. McCollum at that time was

20 the incorrect execution of it or even

21 sharing with us this, you know, that this

22 was an issue that was arising.

23 Am I answering the question?

Page 75

1 Q. Well, what I'm trying to determine,

2 Mr. Lamberth, is sort of what you said.

3 You said at the time, you researched this.

4 I'm trying to find out what you researched,

5 what did you look at, what would I have to

6 go back and look at to verify whether what

7 you say you saw was, in fact, true.

8 A. I would say that I verified the accounts

9 payable that was being informed to me. And

10 some of these reports that I'm getting we

11 have not been able to locate as yet. So

12 what I was using was basically the

13 information shared from the weekly to show

14 the outstanding accounts payable, which is

15 the amount of money we owe the vendors.

16 When I received a call like this, I did not

17 know that that was growing. So my research

18 would have been to look into the accounts

19 payable, which in March I began to see

20 certain areas that concerned me. That

21 indicated to me that the information shared

22 with me on a weekly basis was not exactly

23 the position of the accounts payable we

Page 76

1 owed our vendors.

2 Q. If I were to look at or to have someone

3 knowledgeable to look at the accounts

4 payable, would I see the same things you

5 saw?

6 A. The issue here is the weekly reporting to

7 me as her supervisor versus what was

8 actually in the system. I do not know --

9 we have not been able to produce the weekly

10 reports completely yet, though we've

11 looked. So the issue is the information

12 shared with me on a weekly basis versus the

13 position of the company.

14 Q. So you don't have any evidence to back that

15 up at this time?

16 MR. TRAWICK: Object to the form.

17 I don't think that's what he

18 testified to.

19 Q. Well, I mean --

20 A. No. We have evidence, yes. Given time, we

21 can produce evidence.

22 Q. Okay. Well, what evidence do you have?

23 A. The evidence will be I have some of the

Page 77	Page 79
<p>1 forms. We're continuing to look for them, 2 the reports. We actually have -- we've 3 located several. I do believe that there 4 are -- and I'll have to refer -- I think 5 that we can definitely show this, because 6 the information is not something that just 7 was not completely apparent. 8 Q. What documents have you turned over to me 9 as Ms. McCollum's attorney that would show 10 that? 11 A. Well, this would be in our response. Let 12 me see if I put anything -- 13 MR. TRAWICK: Don't verbalize your 14 thoughts. 15 A. I can't say at this time. I know that, to 16 answer your question, we submitted all of 17 the material that we had in response to 18 your request for information. If we had it 19 at that time, it would have been submitted. 20 Q. Okay. 21 A. I can't answer. 22 Q. Have you discovered any additional 23 documents since then?</p>	<p>1 not being paid? Is that what you were just 2 telling me about? 3 A. Well, the -- probably the -- there is an 4 issue about the health insurance that would 5 have occurred where -- that is a vendor -- 6 where the health insurance premium was not 7 being paid timely, and we received notice 8 of this. Basically, during my research 9 during this period of investigating, I 10 discovered that our health insurance was 11 not being paid timely. That's one. Those 12 are probably the three most significant 13 ones. 14 Q. What period of time was this investigation? 15 A. Probably end of February through March, 16 first of April. 17 Q. Okay. During this time period that you 18 were doing this investigation, did you 19 discuss any of this with Ms. McCollum? 20 A. I discussed with her weekly about getting 21 the accounts payable information to match 22 what exactly we owed. I asked her weekly 23 to be certain that the accounts payable</p>
Page 78	Page 80
<p>1 A. Relating to the inventory? 2 Q. Yes, relating to that issue. 3 A. No. 4 Q. Do I understand you that you believe there 5 are other documents that you have not been 6 able to locate yet that would substantiate 7 that position? 8 A. We have been through the files 9 extensively. Unfortunately, I do not think 10 we will be able to locate a lot of these 11 documents. 12 Q. When Ms. McCollum gave you weekly reports, 13 what did you do with them? 14 A. Most of the time, she would take them back 15 with her. Occasionally I would maybe keep 16 a copy of them, but not anything definite. 17 Q. So you didn't have any regular 18 recordkeeping system? 19 A. Not personally, I did not. I relied on the 20 staff to do that. 21 Q. Have you told me the basis for the 22 statement that she failed to notify 23 management that some of the vendors were</p>	<p>1 information matched every invoice received 2 by the company the date of the receipt. 3 Q. Did you ever go to her and say, 4 Ms. McCollum, this doesn't match? 5 A. Yes. 6 Q. Okay. And when did you do that? 7 A. Toward the period of March, there were a 8 couple of times when the information just 9 didn't appear to be -- to include 10 everything, the accounts payable 11 information that she had reported. 12 Q. You say it didn't appear to. Were there 13 specific things that you pointed out to her 14 and said, explain this to me? 15 A. No, I did not. 16 Q. Okay. Attachment two to your EEOC 17 response, to item number two, we'll mark 18 as -- I think it's Plaintiff's 4. 19 (Plaintiff's Exhibit 4 was marked 20 for identification.) 21 Q. Are those the documents that you rely on 22 for your statement that she failed to pay 23 health insurance premiums timely?</p>

Page 93	Page 95
<p>1 (Plaintiff's Exhibit 6 was marked 2 for identification.) 3 Q. Could you explain to me what you meant by 4 exceeded her authority on several 5 occasions. 6 A. Primarily that would relate to the copier 7 lease where that -- we had discussed 8 obtaining a copier, and we did obtain a 9 copier, and she entered into a lease 10 agreement. Even though the company had 11 discussed the fact that we would do that, I 12 was unaware that she had executed a lease. 13 Q. Was that discussed in one of the management 14 meetings, getting a copier? 15 A. The copier. Not the execution of the lease 16 without an officer signing it. 17 Q. Okay. 18 MR. JACOBS: Let's mark this one 19 as Plaintiff's 7. 20 (Plaintiff's Exhibit 7 was marked 21 for identification.) 22 Q. The next item refers to price decreases 23 from Plextor. Have we discussed that?</p>	<p>1 Q. Did you ever see the agreement that was 2 signed regarding that system? 3 A. I saw parts of the agreement. I don't know 4 that I knew specifically about that. It 5 was Ms. McCollum's responsibility. For 6 Amtren's benefit, that had to be a fully 7 integrated system. It was my understanding 8 with her we would obtain a turnkey fully 9 integrated system, and I subsequently 10 approved her to spend the moneys that we 11 did on that. I do not recall looking 12 specifically at the details of the contract 13 to that extent. 14 Q. Was there a specific amount of money that 15 you approved for her to spend? 16 A. I don't think it was specific, but I think 17 we do -- we did discuss the numbers that we 18 ended up paying. I don't know the exact 19 numbers, but I do think 20 or \$30,000. The 20 issue was not really the financial part so 21 much as to make sure it was turnkey; that 22 it was to be fully implemented. 23 Q. Okay. So if I can restate, and you tell me</p>
Page 94	Page 96
<p>1 A. That was the item we talked about. 2 Q. All right. Which of her duties pertaining 3 to the purchase of MAS90 did she not 4 perform adequately? 5 A. The integration of MAS90 was discussed 6 extensively at the end of 2004, and we had 7 generated a document to sit down and review 8 this process. The undertaking would be 9 significant. It was my understanding that 10 as Ms. McCollum moved forward with that, 11 she would seek integrated services, turnkey 12 integrated services from the vendors that 13 we were discussing. She handled the 14 discussions with the vendors and sought the 15 bidding and was subsequently awarded the 16 bid. At that time -- and it wasn't until 17 later did I know that we did not submit -- 18 we did not obtain a fully integrated 19 package. We obtained a package that was 20 partially integrated that we would 21 subsequently have to -- I guess the word is 22 enter the data on our own later to 23 completely fulfill it.</p>	<p>1 if I'm wrong. Is it fair to say that what 2 you're complaining of there is the fact 3 that she did not contract with Wilson, 4 Price for a completely installed and 5 implemented system? 6 A. Yes. That is a pretty fair assumption. 7 There are a lot of terms that have been 8 passed around about integration of MAS90. 9 The issue that we had was pretty much in 10 line with what you said. 11 Q. Okay. And is that also the basis for your 12 complaint, the next one, that she released 13 Wilson, Price prior to the complete and 14 satisfactory conversion to the new 15 accounting system? 16 A. Yes. 17 Q. Who was your technical assistance person 18 from Wilson, Price in implementation of 19 that system? 20 A. Bobby Lake. 21 Q. Okay. Do you know if Bobby Lake ever 22 complained to Wilson, Price regarding any 23 lack of appropriate performance on the part</p>

Page 97	Page 99
<p>1 of Ms. McCollum?</p> <p>2 A. I'm unaware. I don't know.</p> <p>3 Q. During the time that Ms. McCollum was</p> <p>4 employed by you, were there any reports to</p> <p>5 you from Wilson, Price that her performance</p> <p>6 was less than adequate?</p> <p>7 A. I don't think so. I don't think so.</p> <p>8 Q. Okay. When you hired Bobby Lake, were you</p> <p>9 aware that your contract forbade the hiring</p> <p>10 of any person from Wilson, Price who was</p> <p>11 involved in implementing that contract for</p> <p>12 a period of 180 days?</p> <p>13 MR. TRAWICK: Object to the form.</p> <p>14 Are you stating that's what</p> <p>15 the contract states?</p> <p>16 MR. JACOBS: Yes.</p> <p>17 Q. I'm asking you if you were aware there was</p> <p>18 a restriction in your contract with Wilson,</p> <p>19 Price that you could not hire any of their</p> <p>20 employees who were involved in that</p> <p>21 contract for a time period after completion</p> <p>22 of the contract.</p> <p>23 A. Of how many days?</p>	<p>1 that nature.</p> <p>2 Q. Okay.</p> <p>3 A. Does that -- that's the best I can answer.</p> <p>4 Q. Okay. I'm going to ask you about some</p> <p>5 individuals now. Jerry Weisenfeld is the</p> <p>6 first one. What was Jerry Weisenfeld's</p> <p>7 title?</p> <p>8 A. His title, I believe, was business manager</p> <p>9 or business management. It was more of a</p> <p>10 business expansion role.</p> <p>11 Q. Okay. Was his job different from the</p> <p>12 person who now has the title of business</p> <p>13 manager?</p> <p>14 A. Oh, yes, completely.</p> <p>15 Q. Okay.</p> <p>16 A. Yes. His role -- to clarify,</p> <p>17 Mr. Weisenfeld's role was sales and</p> <p>18 vendor -- large account relations. We have</p> <p>19 a lot of large accounts. His role on the</p> <p>20 business side was really not the inner</p> <p>21 workings, but more about sales, to assist</p> <p>22 in sales, development of strategic</p> <p>23 relationships with some of our larger</p>
Page 98	Page 100
<p>1 Q. I believe it was --I believe it was 180</p> <p>2 days.</p> <p>3 Eighteen months. I'm sorry.</p> <p>4 A. Those items were discussed with Wilson,</p> <p>5 Price when Bobby's employment was sought.</p> <p>6 So we were aware, yes, but the items were</p> <p>7 discussed with Wilson, Price.</p> <p>8 Q. Whom did you discuss it with at Wilson,</p> <p>9 Price?</p> <p>10 A. I basically -- I personally don't think I</p> <p>11 discussed with anybody anything. I think</p> <p>12 Mr. Lake -- it was his responsibility to</p> <p>13 review that.</p> <p>14 Q. Okay. But Amtren was a signatory to the</p> <p>15 contract?</p> <p>16 A. I'll have to see the contract that you're</p> <p>17 talking about. You're talking about for</p> <p>18 that -- the Wilson, Price contract?</p> <p>19 Q. Yes.</p> <p>20 A. How can I answer that without seeing it? I</p> <p>21 mean, I would say we entered into an</p> <p>22 agreement, yes, to purchase MAS90. I do</p> <p>23 not recall the details of the contract, to</p>	<p>1 accounts.</p> <p>2 Q. Did he have any responsibility for the</p> <p>3 MAS90 system?</p> <p>4 A. No, he did not have any responsibility.</p> <p>5 Q. Did he have any responsibilities for</p> <p>6 banking?</p> <p>7 A. No, no direct responsibilities for banking.</p> <p>8 Q. Did he have an indirect responsibility?</p> <p>9 A. No, I don't think so.</p> <p>10 Q. Okay.</p> <p>11 A. You know, his role did overlap in certain</p> <p>12 areas, but he didn't have any direct</p> <p>13 responsibility for banking.</p> <p>14 Q. And was it Mike Bishop you told me was the</p> <p>15 logistics person?</p> <p>16 A. No, David Fields.</p> <p>17 Q. David Fields. Okay.</p> <p>18 Did David Fields ever make any large</p> <p>19 mistakes in inventory?</p> <p>20 A. Pertaining to what period? The period --</p> <p>21 Q. During the time he was employed by Amtren.</p> <p>22 A. In a previous position. It wasn't his</p> <p>23 mistake as an individual, but we did have</p>

Page 101

1 to -- he did make -- there was a sizable
2 mistake made in the costing of our product
3 through the year. At the end of the year,
4 the initial report showed the mistake.
5 Before we closed the year end and produced
6 the documents, it was corrected. So I
7 would say yes, there was an error or
8 omission on his part at that time.
9 Subsequently we identified that and
10 discussed it with him and --
11 Q. Corrected it?
12 A. -- corrected it.
13 Q. And I assume he did not get terminated?
14 A. He got moved to a different position. He
15 got -- he was removed entirely from his
16 accounting duties.
17 Q. Okay. What position was he moved to?
18 A. Primarily purchasing -- well, the
19 production and logistics role.
20 Q. Okay. I believe that it's been indicated
21 in responses that Lisa McNamee took over
22 Ms. McCollum's duties when she was
23 terminated.

Page 102

1 A. That's correct.
2 MR. TRAWICK: Well, I think our
3 responses were she took over
4 some of the duties, and later
5 Susan took over some as
6 Mr. Lamberth has testified
7 here today.
8 Q. Okay. What duties did Lisa McNamee take
9 over?
10 A. Primarily the execution of the accounts
11 payable, accounts receivable. She did the
12 accounting portions as far as the --
13 actually, the payroll, the accounts
14 payable, and the accounts receivable.
15 Q. Putting information into --
16 A. And mainly producing the documents --
17 Q. Okay.
18 A. She produced the checks for payment. She
19 did everything -- she did not sign them,
20 but she did produce the checks for payment.
21 Q. Okay. Did she have the same responsibility
22 in reference to those blanket purchase
23 orders that you were talking about?

Page 103

1 A. In generating them, because of the
2 deficiencies of the system, we worked
3 together to try to correct some of those.
4 Q. Okay. And Susan Seeber, what duties did
5 she have when she came on board?
6 A. She basically --
7 MR. TRAWICK: Other than what he's
8 already testified to?
9 MR. JACOBS: Yes.
10 A. That's primarily it.
11 Q. Okay.
12 MR. TRAWICK: Unless you have
13 something to add to what
14 you've already testified to.
15 THE WITNESS: No.
16 Q. Who at the company was responsible for
17 strategic planning?
18 A. That probably would be myself.
19 Q. Have you fired any management employees at
20 Amtren other than Ms. McCollum?
21 A. You mean in the history of the company
22 or --
23 Q. Yes.

Page 104

1 A. Well, I would say yes.
2 Q. Okay. Who else have you fired?
3 A. Mr. Fields.
4 Q. Why was Mr. Fields fired?
5 A. Basically, his job performance. Inadequate
6 job performance.
7 Q. Any others?
8 A. Mr. Traywick.
9 MR. TRAWICK: Not me.
10 A. I'm sorry. Len Traywick.
11 MR. TRAWICK: I haven't been fired
12 yet.
13 Q. What was that person's position?
14 A. Len was -- Len was there a short time
15 frame. He was there for production,
16 primarily production, but he failed to be
17 productive, basically, and his job
18 performance failed to meet expectations of
19 the company.
20 Q. Is it true that when you fired
21 Ms. McCollum, you told her that you
22 couldn't -- you were firing her because you
23 couldn't trust her?

<p style="text-align: right;">Page 105</p> <p>1 A. Not entirely, no. I didn't make the 2 statement, that's why I'm firing you, no. 3 We sat down and discussed the deficiencies 4 of these items we've discussed here. 5 Q. And to be sure I'm clear, you went over 6 each of these items with her when you 7 terminated her? 8 A. Actually, no. The exit interview -- being 9 a small business, I prepared for the exit 10 interview with a list of items that we had 11 located during this few months of 12 discovery. I sat down with her to discuss 13 those, and we only got through a few, and 14 that basically -- I think it pretty much -- 15 she knew where we were going, and we 16 just -- I moved on. I did not -- 17 It would be a given, you know, that any 18 of those items on there, to my opinion, 19 were sufficient enough for dismissal. So 20 even though the additional documents were 21 there, after I got through the first few, I 22 didn't continue on with the rest of them. 23 Q. Were there any other females that you</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. Was she a full-time employee? 2 A. Yes, she was. 3 Q. And where did she -- what was her position? 4 A. She was an assistant to me. 5 Q. Who was responsible for filing your tax 6 payments and tax returns after Ms. McCollum 7 was terminated? 8 A. That would have -- immediately after that, 9 it would have fallen into Ms. McCollum's 10 responsibilities -- I mean, Ms. McNamee's 11 responsibilities. Yes. Immediately upon 12 that, it would have been -- fallen to 13 Ms. McNamee. 14 Q. When did you first become aware of what was 15 submitted as Defendant's Exhibit 5 at 16 Ms. McCollum's deposition? I believe it's 17 Exhibit 5 also to this deposition. 18 MR. TRAWICK: You have 19 Defendant's -- 20 MR. JACOBS: I have Defendant's 5 21 here. 22 MR. TRAWICK: I don't have my copy 23 of her deposition. Can we</p>
<p style="text-align: right;">Page 106</p> <p>1 terminated in 2004, 2005? 2 A. Terminated? 3 Q. Yes. 4 A. No. Let me verify that, make sure. 2004, 5 2005. Full-time employees? 6 Q. Full time or part time. 7 A. If that doesn't include contract workers, 8 no. No one else. 9 Q. Were there any contract workers that you 10 terminated? 11 A. Well, contract workers are temporary. I 12 mean, they're hired on need and 13 occasionally released when the need is not 14 there. So, yes, I believe there was one 15 during this period. 16 Q. Okay. Do you recall who that was? 17 A. Not by name. 18 Q. Let me tell you, I have heard the name in 19 Ms. McCollum's position of Melody or 20 Melanie. 21 A. No. Melanie, she resigned. 22 Q. Okay. And she was not terminated? 23 A. No. She resigned.</p>	<p style="text-align: right;">Page 108</p> <p>1 take a break, let me get my 2 copy? 3 (Plaintiff's Exhibit 8 was marked 4 for identification.) 5 (Brief recess.) 6 Q. (Mr. Jacobs continuing) Mr. Lamberth, I've 7 given you a copy of what was marked as 8 Defendant's Exhibit 5 at Ms. McCollum's 9 deposition. I'd like to ask you, when did 10 you become aware of that document? 11 A. I don't really recall the exact date of 12 this. 13 MR. TRAWICK: Now, in the 14 Plaintiff's Exhibit 8, you've 15 included Defendant's Exhibit 5 16 to Ms. McCollum's deposition 17 and Defendant's Exhibit 6 to 18 her deposition. I'm not sure 19 exactly what you're asking 20 him. 21 MR. JACOBS: I was asking about 22 5. I didn't really mean to 23 include 6, although it's a</p>

Page 109	Page 111
<p>1 similar type of document.</p> <p>2 A. I don't know if it's the exact tax notice,</p> <p>3 but I did -- during this period of review,</p> <p>4 we did discover an unposted notice in the</p> <p>5 accounting area that had -- showed a</p> <p>6 penalty that I was unaware of. I don't</p> <p>7 know if the exact document or not.</p> <p>8 MR. JACOBS: And I'm going to take</p> <p>9 Number 6 off of the back of</p> <p>10 this. I really didn't intend</p> <p>11 to include that. I just made</p> <p>12 a mistake in handing it to</p> <p>13 him.</p> <p>14 Q. So you believe that you got that prior to</p> <p>15 the time that she was terminated?</p> <p>16 A. I can't say if this same exact document.</p> <p>17 I'm not sure of that. But I will tell you</p> <p>18 that I discovered a notice from the IRS on</p> <p>19 a late penalty that I was unaware of.</p> <p>20 Q. All right. Prior to Ms. McCollum's</p> <p>21 employment with Amtren, had there ever been</p> <p>22 any 941's that were paid late, taxes that</p> <p>23 were paid late or penalties incurred?</p>	<p>1 A. They sent a letter of notice of</p> <p>2 termination, immediate termination.</p> <p>3 Q. And I guess my question is, did they</p> <p>4 actually terminate it?</p> <p>5 A. Upon receipt of that letter, we arranged</p> <p>6 special circumstances and sent them an</p> <p>7 express payment overnight. It is my</p> <p>8 understanding that Alabama has a protection</p> <p>9 factor in there that allowed us to send</p> <p>10 that check overnight, and they would</p> <p>11 continue our coverage. I'm not sure of the</p> <p>12 exact -- how all that works. But when we</p> <p>13 discovered the notice and we made the --</p> <p>14 contacted them, they assured us. They</p> <p>15 mandated that we catch the arrears payment</p> <p>16 that had been collecting up front, so we</p> <p>17 had to pay two payments immediately in</p> <p>18 overnight payment.</p> <p>19 Q. Was Lisa McNamee ever terminated?</p> <p>20 A. No.</p> <p>21 Q. Did she leave the employ of Amtren at some</p> <p>22 point?</p> <p>23 A. Yes.</p>
Page 110	Page 112
<p>1 A. I don't know about the 941, but we had --</p> <p>2 there were some occasions where we did have</p> <p>3 penalties on the payroll, late.</p> <p>4 Q. Okay. Have you had any since she was</p> <p>5 terminated?</p> <p>6 A. I can't answer that completely. To the</p> <p>7 best of my knowledge, if we had any, it</p> <p>8 would have been during the period</p> <p>9 immediately following Ms. McCollum's</p> <p>10 departure because we did not have all the</p> <p>11 information to subsequently track where we</p> <p>12 were. But since taking -- moving several</p> <p>13 months beyond that, when we properly track</p> <p>14 and document what we needed to do, we've</p> <p>15 not paid any. So I don't know the exact</p> <p>16 time there as to when.</p> <p>17 Q. In the time period prior to her employment</p> <p>18 where there were some late payments and</p> <p>19 some penalties, was the person who was</p> <p>20 responsible for that terminated?</p> <p>21 A. No.</p> <p>22 Q. Did Blue Cross Blue Shield actually</p> <p>23 terminate your health insurance coverage?</p>	<p>1 Q. What is the position held by Amy Holley?</p> <p>2 A. She is a -- I would classify Amy as a</p> <p>3 part-time support, office staff support.</p> <p>4 Let me ask you. During this period now</p> <p>5 or the time of Ms. McCollum?</p> <p>6 Q. Let me ask now.</p> <p>7 A. Now? As a support person.</p> <p>8 Q. Okay.</p> <p>9 A. She supports in a couple of areas, pretty</p> <p>10 much where they need her.</p> <p>11 Q. What was her position during the time</p> <p>12 Ms. McCollum was employed?</p> <p>13 A. I think she was the receptionist, and she</p> <p>14 worked with Ms. McCollum on accounting</p> <p>15 entry duties.</p> <p>16 Q. Okay. Have you ever been terminated from a</p> <p>17 job?</p> <p>18 A. From a -- yes, from a company I owned part</p> <p>19 of.</p> <p>20 Q. You were a part owner of the company?</p> <p>21 A. Yes. It was -- I guess I was 25 years old</p> <p>22 and had started -- 25, 26 -- started a</p> <p>23 business. The business owners and myself</p>

Page 117

Page 119

1 unclear from this response,
 2 without waiving the objection,
 3 that they will be made
 4 available --
 5 MR. TRAWICK: I can tell you that
 6 I'm not going to spring some
 7 documents on you at the last
 8 minute if that's what you're
 9 asking.
 10 MR. JACOBS: Well, that's one of
 11 my concerns, obviously.
 12 MR. TRAWICK: No. I don't
 13 practice law that way. If
 14 there's a document that we're
 15 going to rely upon, and it
 16 hasn't been produced, I'll
 17 supplement it before motions
 18 for summary judgment are due.
 19 I think we've produced
 20 everything.
 21 MR. JACOBS: I believe that's all
 22 that I have, but I would like
 23 for us to discuss that issue.

1 Q. Is it a fair statement that you could have
 2 said no --
 3 A. Exactly.
 4 Q. -- on hiring any of the females who
 5 currently work there?
 6 A. That's correct.
 7 Q. In the case of Lisa McNamee, did she get
 8 additional duties after Ms. McCollum was
 9 terminated and after you had a chance to
 10 evaluate her job performance?
 11 A. Yes. She basically performed the role of
 12 the accounting person for several weeks,
 13 and then her ability -- it was apparent
 14 that she could move further in the role,
 15 and so we moved her into the role of
 16 accounting manager after observing her
 17 efforts during this period after
 18 Ms. McCollum was terminated.
 19 Q. In fact, I think you gave Ms. McNamee a
 20 raise after you had an opportunity to
 21 evaluate her job performance in her new
 22 role; is that correct?
 23 A. That's correct.

Page 118

Page 120

1 MR. TRAWICK: I'll be happy to do
 2 that. I have a couple of
 3 questions.
 4 EXAMINATION
 5 BY MR. TRAWICK:
 6 Q. Lisa McNamee is obviously female; is that
 7 correct?
 8 A. That's correct.
 9 Q. And what is her race or ethnicity? Is she
 10 Korean?
 11 A. She's Korean.
 12 Q. And Susan Seeber. Susan's obviously a
 13 female?
 14 A. That's correct.
 15 Q. And I believe you hired Lisa and Susan; is
 16 that correct?
 17 A. That's correct.
 18 Q. The females that currently work at Amtren,
 19 did you hire them? And I'm talking about
 20 full time.
 21 A. Yes. Full time, yes. If I didn't hire, I
 22 was in on the hiring process definitely and
 23 on the approval process, yes.

1 Q. Has Susan received a raise since she's been
 2 employed?
 3 A. Yes. She -- I think her starting pay was
 4 around 40,000, and she's subsequently at
 5 50,000 per year now.
 6 Q. Let me ask you about this cancellation of
 7 Amtren's credit card processor. You were
 8 present during Ms. McCollum's deposition,
 9 correct?
 10 A. Yes, sir.
 11 Q. Ms. McCollum seems to blame that on you.
 12 Do you recall that testimony?
 13 A. Yes.
 14 Q. Tell me about how Amtren's credit card
 15 processor got canceled.
 16 A. The merchant agreement account was
 17 terminated over lack of payment of \$118. I
 18 can't remember the exact amount.
 19 The notification was submitted to
 20 Amtren. I had never been made aware of
 21 that notification. There is, apparently, a
 22 time frame to respond to it. We missed
 23 that time frame, and Chase Manhattan

Page 121

1 terminated our agreement.
2 This termination resulted in us never
3 being able to receive -- use a Visa or
4 MasterCard as a corporation again. It's
5 actually, from what I understand, a
6 permanent blackball. Subsequently we used
7 a third party, Pay Pal, and they -- due
8 diligence was used to even use our services
9 because of this original termination.
10 The reason for the termination --
11 Ms. McCollum's testimony was that we had
12 limited the use -- I believe put limits on
13 the use of an account or something. The
14 basis of the mistake she made was that if
15 we just provided them the \$118 in a timely
16 manner or allowed them to -- access to -- I
17 believe that may have been a back charge --
18 then the agreement would have stood. I was
19 never made aware of that, you know, in any
20 way, form, or fashion. At that time we
21 had -- I was informed that we needed to
22 change credit card accounts for other
23 purposes. So it was timed during a time

Page 122

1 that we were pursuing other credit card
2 accounts, so I was unaware of the
3 termination.
4 Q. Ms. McCollum testified or refused to admit
5 that this is a significant problem for
6 Amtren. How would you characterize this
7 problem?
8 A. It is significant, because every item that
9 we sell on the Internet is sold by credit
10 card. Every purchase, every spare part has
11 to be sold by credit card. In our sales
12 methods of today, I would say credit cards
13 probably would achieve, you know, a quarter
14 of our sales. We subsequently have to use
15 third-party companies to do this now, you
16 know, at a higher rate of commission, I
17 guess, to the merchant account.
18 Q. Ms. McCollum also in her testimony seemed
19 to blame you for the fact that Chase
20 Merchant Services could not deduct this
21 \$118.41 from your bank account. Is that
22 correct?
23 A. No, that's not correct. That's not

Page 123

1 correct. I was unaware of any errors in
2 back charging by Chase. The separation of
3 accounts that Ms. McCollum had testified
4 where we had separated our accounts --
5 Chase Manhattan has an account they can
6 sweep -- apparently, they can deduct money
7 from once they deposit. I was aware we did
8 separate the accounts. I was not aware we
9 did not manage the dollar amount in those
10 accounts to sufficiently satisfy any back
11 charges being generated by Chase
12 Manhattan.
13 Any time a back charge is initiated, a
14 paper document is mailed to the company.
15 There is, I guess, a time frame there that
16 you can respond to the -- that -- you know,
17 the fact that they couldn't back charge. I
18 guess it would be a -- miss a payment.
19 Q. Was it Ms. McCollum's responsibility to
20 insure that this kind of problem didn't
21 happen?
22 A. Yes. In her role, she would have been
23 responsible to make sure there was timely

Page 124

1 payment of the back charges.
2 Q. Would notices to the company have gone to
3 Ms. McCollum?
4 A. No. The notice -- at that time, the notice
5 went to Mr. Fields.
6 Q. Okay.
7 A. Actually, let me clarify that. The notice
8 was directed to her by matter of her
9 responsibility. It wasn't addressed to
10 her. Yes, all notices went to her, but
11 this notice -- this subsequent notice was
12 not addressed to her.
13 Q. Okay. I believe Ms. McCollum testified in
14 her deposition she couldn't refute
15 testimony that she received this notice.
16 It's your understanding that she did
17 receive this notice; is that correct?
18 A. Yes.
19 Q. Did she deny receiving this notice when you
20 talked with her about it?
21 A. I'm not sure. I don't think I discussed it
22 with her. I didn't discuss it with her.
23 At that time, we were unaware of the

Page 125	Page 127
<p>1 magnitude of it. We were aware that we</p> <p>2 had -- the account had terminated, but we</p> <p>3 had not discovered that document that we</p> <p>4 later showed.</p> <p>5 Q. But it was Ms. McCollum's responsibility to</p> <p>6 insure that there were sufficient funds in</p> <p>7 Amtren's accounts so that this problem</p> <p>8 would not have happened; is that right?</p> <p>9 A. Right. Separation of the accounts is her</p> <p>10 responsibility to manage the funds.</p> <p>11 Q. Would it have been her responsibility to</p> <p>12 know which bank accounts Chase Merchant</p> <p>13 Services would have attempted to deduct</p> <p>14 this from?</p> <p>15 A. Yes.</p> <p>16 Q. I want to direct your attention to</p> <p>17 Plaintiff's Exhibit 2, page two,</p> <p>18 paragraph -- or item number one. This</p> <p>19 document states that Amtren suffered</p> <p>20 penalties of \$3,008.66. Is that what the</p> <p>21 document states?</p> <p>22 A. Yes.</p> <p>23 Q. And is it correct that these penalties were</p>	<p>1 costing information for the products at the</p> <p>2 end of the period showed that we had an</p> <p>3 additional \$70,000 of income available when</p> <p>4 we did our preliminary close. At the</p> <p>5 period when we adjusted everything for</p> <p>6 final close, the error was picked up. So</p> <p>7 there was basically a situation of a</p> <p>8 reporting error is what it amounts to of</p> <p>9 the preliminary document versus the final</p> <p>10 document.</p> <p>11 Q. Ms. McCollum also testified she believes</p> <p>12 Jerry Weisenfeld was hired to replace her.</p> <p>13 Is that correct?</p> <p>14 A. That is not correct. Mr. Weisenfeld was</p> <p>15 hired to basically -- the role that he was</p> <p>16 hired into was a business management role,</p> <p>17 but it was a business management role that</p> <p>18 would basically expand our sales base. And</p> <p>19 at that time we had considered partnering</p> <p>20 with certain other companies on technology,</p> <p>21 and it was a position to strategically</p> <p>22 align some of those partnerships.</p> <p>23 Technical partnerships, to clarify.</p>
Page 126	Page 128
<p>1 paid by Amtren because of errors of</p> <p>2 Ms. McCollum?</p> <p>3 A. Yes. She was responsible for making the</p> <p>4 deposits at that time or the reports.</p> <p>5 There were two errors. One was a</p> <p>6 reporting error and the other was the</p> <p>7 timely deposit of the weekly tax</p> <p>8 withholdings</p> <p>9 Q. Let me direct your attention to item number</p> <p>10 two. In response to Mr. Jacobs' questions,</p> <p>11 you answered questions about Amtren's</p> <p>12 health insurance. Is that with Blue Cross</p> <p>13 Blue Shield?</p> <p>14 A. Yes, it is.</p> <p>15 Q. Ms. McCollum in her deposition testified</p> <p>16 that David Fields' error cost Amtren</p> <p>17 \$70,000. I believe Mr. Jacobs asked you</p> <p>18 about errors made by David Fields. Did</p> <p>19 Mr. Fields' error cost Amtren \$70,000?</p> <p>20 A. No, not in income. Not direct --</p> <p>21 basically, it did not cause the loss of</p> <p>22 that money. What it did, basically, was</p> <p>23 the difference -- the preliminary -- the</p>	<p>1 Q. Ms. McCollum also testified regarding a</p> <p>2 letter which is marked as Defendant's</p> <p>3 Exhibit 3 to her deposition. Her testimony</p> <p>4 was something to the effect that in this</p> <p>5 letter, you praised her accounting</p> <p>6 abilities. Tell me about this letter</p> <p>7 that's dated March 30th, 2005.</p> <p>8 A. That letter was a -- it's a letter for</p> <p>9 renewing our credit with our bank. It's a</p> <p>10 letter that we attempt to do, if not once,</p> <p>11 twice a year. Just -- it's a health check</p> <p>12 to provide to the bank.</p> <p>13 Q. This is a letter for the benefit of the</p> <p>14 bank?</p> <p>15 A. It is. It is a letter that is a -- it's an</p> <p>16 information letter is what it is.</p> <p>17 Q. It's not a letter where you're telling</p> <p>18 Ms. McCollum she's doing a great job?</p> <p>19 A. No. In fact, statements in there are</p> <p>20 statements that the company is in good</p> <p>21 shape and that -- at that time, even when I</p> <p>22 generated the information, I had no reason</p> <p>23 to suspect the information Ms. McCollum was</p>

Page 129	Page 131
<p>1 providing was anything but true.</p> <p>2 Q. Who was responsible for maintaining custody</p> <p>3 of the hard copies of the checking accounts</p> <p>4 that Amtren received?</p> <p>5 A. Ms. McCollum.</p> <p>6 Q. Did those go missing after she was</p> <p>7 terminated or about the time she was</p> <p>8 terminated?</p> <p>9 Let me strike that and rephrase that.</p> <p>10 After Ms. McCollum was terminated, did</p> <p>11 Amtren attempt to find those hard copies of</p> <p>12 the checking accounts?</p> <p>13 A. Yes. In fact, I looked for several weeks</p> <p>14 prior to terminating Ms. McCollum to try to</p> <p>15 understand our position, and we could not</p> <p>16 find any reconciled check statements or any</p> <p>17 statements in any of our files. We later</p> <p>18 requested from the bank those.</p> <p>19 Q. In response to a question by Mr. Jacobs,</p> <p>20 you testified about the problems and the</p> <p>21 errors committed by Ms. McCollum regarding</p> <p>22 Plextor. Do you recall that testimony?</p> <p>23 A. Yes.</p>	<p>1 A. In fact, we -- there is no -- there is --</p> <p>2 there was a notice from -- I believe it was</p> <p>3 Padus, the second in charge of Padus,</p> <p>4 Elizabeth -- I can't remember her last</p> <p>5 name, Benito or something, that -- the</p> <p>6 issues that had been going on for</p> <p>7 Ms. McCollum when Ms. McCollum was handling</p> <p>8 their account.</p> <p>9 Q. I believe Ms. McCollum in her deposition</p> <p>10 blamed the failure to timely pay Padus on</p> <p>11 cash flow problems. Would you agree with</p> <p>12 that testimony?</p> <p>13 A. No.</p> <p>14 Q. During this period of time, did Amtren have</p> <p>15 a line of credit available to the company?</p> <p>16 A. Let me clarify. Again, there's a series of</p> <p>17 events that led to the depletion of that</p> <p>18 amount of money. So backing up to --</p> <p>19 Q. The depletion of the amount of money in</p> <p>20 Amtren's checking accounts?</p> <p>21 A. Well, the line of credit. In other words,</p> <p>22 the -- under Ms. McCollum's management, our</p> <p>23 line -- at the beginning of -- I would say</p>
Page 130	Page 132
<p>1 Q. I believe in Ms. McCollum's deposition, she</p> <p>2 testified she could not recall if she was</p> <p>3 present during management meetings where</p> <p>4 this issue was discussed. Was Ms. McCollum</p> <p>5 present when these issues with Plextor were</p> <p>6 discussed?</p> <p>7 A. Yes.</p> <p>8 Q. And were they discussed with her?</p> <p>9 A. Yes.</p> <p>10 Q. Tell me about the company name Padus,</p> <p>11 P-A-D-U-S.</p> <p>12 A. Padus is a critical vendor for us. y</p> <p>13 make the software tool kit we use. It's an</p> <p>14 imbedded portion of our product. They have</p> <p>15 been a major part of our company since the</p> <p>16 beginning. We selected -- their software</p> <p>17 and the software they generate that's</p> <p>18 inside our software has provided tremendous</p> <p>19 benefits because of the technology.</p> <p>20 Q. I believe Ms. McCollum testified in her</p> <p>21 deposition that it was her responsibility</p> <p>22 to insure that Padus was timely paid. Is</p> <p>23 that correct?</p>	<p>1 maybe at the end of 2004, our line of</p> <p>2 credit was -- in fact, I don't think we had</p> <p>3 much money borrowed on our line of credit,</p> <p>4 and we had sufficient cash. During the</p> <p>5 periods of November, December, January,</p> <p>6 February, March -- December of '04 and</p> <p>7 January, February, March '05, the moneys</p> <p>8 were basically expended and our line of</p> <p>9 credit was drawn on maximum. In fact, upon</p> <p>10 Ms. McCollum's departure, I had to seek</p> <p>11 immediate -- an immediate loan of \$200,000</p> <p>12 to pay down the vendors that had been aged</p> <p>13 out, you know, aged out meaning that had</p> <p>14 been -- that hadn't been paid. I'm not</p> <p>15 sure of the exact amount. I believe it was</p> <p>16 about 200,000, because the credit -- they</p> <p>17 were basically one by one threatening to</p> <p>18 cut off our credit.</p> <p>19 Q. Is it correct that Padus is an important</p> <p>20 vendor that Amtren buys things from?</p> <p>21 A. The loss of the license from Padus would</p> <p>22 shut us down because what we would have to</p> <p>23 do is -- there's no quick way to engineer</p>

Page 133

Page 135

1 another software package. You would
2 literally be -- if they terminated their
3 license, we would have to stop shipping
4 product immediately.

5 Q. So is it fair to say that it was essential
6 for Amtren's continued operation to keep
7 Padus paid timely and keep them happy?

8 A. Absolutely. Unlike other items that you
9 ship, you can -- materials are yours and
10 you can ship, when there's a license
11 involved, upon notice that a license is
12 terminated, you can no longer ship your
13 product.

14 MR. TRAWICK: I think that's all I
15 have.

16 *****

17 FURTHER DEPONENT SAITH NOT

18 *****

19
20
21
22
23

1 examination of said witness by counsel for the
2 parties set out herein. The reading and signing of
3 same is hereby waived.

4 I further certify that I am neither of kin
5 nor of counsel to the parties to said cause nor in
6 any manner interested in the results thereof.

7 This 17th day of November 2006.

8
9
10

11 Patricia G. Starkie, Registered
12 Diplomate Reporter, CRR, and
13 Commissioner for the State
14 of Alabama at Large

15
16
17
18
19
20
21
22
23

Page 134

1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA:

3 MONTGOMERY COUNTY:

4 I, Patricia G. Starkie, Registered
5 Diplomate Reporter, CRR, and Commissioner for the
6 State of Alabama at Large, do hereby certify that I
7 reported the deposition of:

8 KIRK LAMBERTH

9 who was first duly sworn by me to speak the truth,
10 the whole truth and nothing but the truth, in the
11 matter of:

12 JANICE McCOLLUM,

13 Plaintiff,

14 vs.

15 AMTREN, INC.,

16 Defendant.

17 In The U.S. District Court

18 For the Middle District of Alabama

19 Northern Division

20 Case Number 05-CV-0326-W

21 on October 15, 2006.

22 The foregoing 133 computer printed pages
23 contain a true and correct transcript of the